

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

THE CIT GROUP/EQUIPMENT
FINANCING, INC. f/k/a SDI CAPITAL
RESOURCES, INC.

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Plaintiff,

*

Civil Action No.: AMD 02-2069

v.

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PAUL J. VIGNOLA ELECTRIC
COMPANY, INC., et al.,

*

*

Defendants.

* * * * *

**DEFENDANTS' OPPOSITION TO MOTION TO STRIKE DEFENDANTS'
AFFIDAVIT IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**

The Defendants, Paul J. Vignola Electric Company, Inc. and Joann P. Vignola, by and through their attorneys, Robert J. Kim, Mark W. Schweitzer and McNamee, Hosea, Jernigan, Kim, Greenan & Walker, P.A., file Defendants' Opposition to Strike Defendants' Affidavit in Opposition to Motion for Summary Judgment and in support thereof state the following:

The Plaintiff seeks, pursuant to Federal Rule of Civil Procedure 56(g), to strike the Affidavit of Paul J. Vignola, which was filed in support of the Defendants' Opposition to Motion for Summary Judgment. Rule 56(g) allows a court to impose sanctions if affidavits are presented in bad faith or solely for the purpose of delay.

The facts of this case show the absence of bad faith. When it was noticed that discovery was not timely answered in this case, counsel for the Defendants immediately called opposing counsel and stated that a mistake had been made. At that time, counsel for the parties discussed resolving the issues surrounding discovery and the case. It is acknowledged that due to

deadlines imposed on the case at that time, the Plaintiff was required to file a Motion for Summary Judgment or potentially lose that right. The Plaintiff filed a Motion for Summary Judgment.

As required by the Federal Rules of Civil Procedure, the Defendants timely filed an Opposition to Motion for Summary Judgment. Attached to the Motion for Summary Judgment was the Affidavit which is the subject of the instant Motion.

At the initial show cause hearing conducted in the beginning of this case, the Defendants argued that they believed that they were purchasing the Equipment and that alleged *Lease* was a lease disguised as a security interest. The Affidavit that is the subject of this Motion states that the Defendants were advised that financing was obtained for the purchase of the Equipment, but the only documents the Plaintiff had at the time were for a lease. The Affidavit continues by stating that the Defendants were advised that it was no big deal because the lease functioned exactly like an installment purchase and that the documents would be changed at a later date. Those defenses have been consistent from the beginning of this case and shows that the defenses were not concocted after the fact to frustrate the motion. The Defendants respectfully submit that that shows that absence of bad faith.

In addition, the Defendants have provided answers to all of the discovery requested by the Plaintiff and the Defendants will provide additional discovery if requested.

The purpose of the Affidavit was not to delay the case. The purpose of the Affidavit was to support the defenses that the Defendants were being sued under a lease even though the Defendants were promised that they were purchasing the Equipment. The Affidavit does not contradict prior testimony, but is in fact consistent with the defenses disclosed since the

beginning of the case. This shows that the Affidavit was not submitted for the purpose of delay.

Incidentally, it is also noted that Federal Rule of Civil Procedure 56(g) does not authorize the striking of an affidavit determined to have been filed in bad faith or solely for the purpose of delay.

WHEREFORE, the Defendants, Paul J. Vignola Electric Company, Inc. and Joann P. Vignola, respectfully request this Honorable Court to deny the Plaintiff's Motion to Strike the Defendants' Affidavit and grant the Defendants such other relief deemed appropriate.

REQUEST FOR HEARING

The Defendants, Paul J. Vignola Electric Company, Inc. and Joann P. Vignola, respectfully request a hearing on the Motion to Strike Defendants' Affidavit in Support of Motion for Summary Judgment.

CITATION OF AUTHORITY

Fed. R. Civ. P. (56)(g)

Respectfully submitted,

McNamee, Hosea, Jernigan,
Kim, Greenan & Walker, P.A.

By: _____
Robert J. Kim (Bar No. 03403)

By: _____
Mark W. Schweitzer (Bar No. 14402)
6411 Ivy Lane, Suite 200
Greenbelt, Maryland 20770
301-441-2420
*Attorneys for the Defendants, Paul J. Vignola Electric
Company, Inc. and Joann P. Vignola*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of April, 2003, a true copy of the foregoing, *Opposition to Motion to Strike Defendants' Affidavit in Opposition to Motion for Summary Judgment*, was placed in the U.S. mail, postage prepaid to: Steven N. Leites, Esq., Leites, Leites & Friedberg, P.C., 25 Hooks Lane, Suite 302, Baltimore, Maryland 21208-1302.

Mark W. Schweitzer

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ORDER

UPON CONSIDERATION of the Motion to Strike Defendants' Affidavit in Opposition to Motion for Summary Judgment and the Opposition filed thereto, it is,

ORDERED, that the Motion to Strike Defendants' Affidavit in Opposition to Motion for Summary Judgment be and the same hereby, is DENIED.

Date: _____

Judge, United States District Court
For the District of Maryland

Copies furnished to:

Robert J. Kim, Esq.
Mark W. Schweitzer, Esq.
McNamee, Hosea, Jernigan, Kim, Greenan & Walker, P.A.
6411 Ivy Lane, Suite 200
Greenbelt, Maryland 20770

Steven N. Leites, Esq.
Leites, Leites & Friedberg, P.C.
25 Hooks Lane, Suite 302
Baltimore, Maryland 21208-1302